

No. 2000-94

AN ACT

SB 1477

Amending the act of September 30, 1985 (P.L.240, No.61), entitled "An act to facilitate vehicular traffic within and across the Commonwealth by providing for the construction, reconstruction, improvement, operation and maintenance of toll roads and the conversion of existing toll-free roads to toll roads in Pennsylvania; conferring powers and imposing duties on the Pennsylvania Turnpike Commission; providing for membership on the Pennsylvania Turnpike Commission; authorizing issuance of turnpike revenue bonds, notes or other obligations of the commission, payable solely from revenues of the commission, including tolls, or from such other funds as may be available to the commission for that purpose, to pay the costs of such toll roads including the acquisition and other costs of toll-free roads and for refunding purposes; providing that no debt of the Commonwealth shall be incurred in the exercise of any of the powers granted by this act; providing for the collection of tolls for the payment of such bonds, notes or other obligations, and for the cost of maintenance, operation and repair of the toll roads including toll-free roads converted to toll roads; making such turnpike revenue bonds, notes or other obligations exempt from taxation; constituting the same legal investments in certain instances; requiring suits against the commission to be brought in the courts in which such actions may be brought against the Commonwealth; prescribing conditions on which toll roads shall be turned over to the Department of Transportation; providing for grade separations, grade changes, relocations, restorations and vacations of public roads and State highways affected by the toll roads; providing for the purchasing or condemnation of land and procedure for determining damages in condemnation; granting certain powers and authority to municipalities and agencies of the Commonwealth to cooperate with the commission; conferring powers and imposing duties on the Department of Transportation; authorizing the Secretary of Transportation to enter into negotiations with the United States Department of Transportation, the Federal Highway Administration or any other Federal agency regarding the conversion of toll-free highways constructed in the Commonwealth using Federal funds to toll roads; and authorizing the Secretary of Transportation to enter into agreements on behalf of the Commonwealth and the commission with the United States Department of Transportation, the Federal Highway Administration or any other Federal agency with respect to obtaining Federal funds for resurfacing, restoring, rehabilitating or reconstructing toll roads in Pennsylvania," further providing for definitions and for functions of the Pennsylvania Turnpike Commission; and providing for enforcement related to electronic toll collection.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "owner" in section 2 of the act of September 30, 1985 (P.L.240, No.61), known as the Turnpike Organization, Extension and Toll Road Conversion Act, is amended and the section is amended by adding definitions to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Electronic toll collection.” *A system of collecting tolls or charges that is capable of charging an account holder for the prescribed toll by electronic transmission of information between a device on a vehicle and a device in a toll lane at a toll collection facility.*

“Lessee.” *Any person, corporation, firm, partnership, agency, association or organization that rents, leases or contracts for the use of a vehicle and has exclusive use of the vehicle for any period of time.*

“Lessor.” *Any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee under a rental agreement, lease or other agreement under which the lessee has the exclusive use of the vehicle for any period of time.*

“Operator.” *An individual that uses or operates a vehicle with or without the permission of the owner.*

“Owner.” [An] *Except as provided in section 16.1(e), an individual, copartnership, association or corporation having any title or interest in any property rights, easements or franchises authorized to be acquired by this act.*

* * *

“Vehicle.” *As defined in 75 Pa.C.S. § 102 (relating to definitions).*

“Violation enforcement system.” *A vehicle sensor, placed in a location to work in conjunction with a toll collection facility, which automatically produces a videotape or photograph, microphotograph or other recorded image of the rear portion of each vehicle at the time the vehicle is used or operated in violation of the toll collection regulations. This term includes any other technology which identifies a vehicle by photographic, electronic or other method.*

Section 2. Section 7 of the act is amended to read:

Section 7. Commission powers and duties enumerated; payment of maintenance.

(a) Powers and duties of commission.—The commission is authorized to:

(1) Maintain a principal office at such place as shall be designated by the commission.

(2) Contract and be contracted within its own name.

(3) Sue and be sued in its own name, plead and be impleaded. Any and all actions at law or in equity against the commission shall be brought only in the courts in which such actions may be brought against the Commonwealth.

(4) Have an official seal.

(5) Make necessary rules and regulations for its own government *and in control of traffic.*

(6) Acquire, hold, accept, own, use, hire, lease, exchange, operate and dispose of personal property, real property and interests in real property, and to make and enter into all contracts and agreements

necessary or incidental to the performance of its duties and the execution of its powers under this act, and to employ engineering, traffic, architectural and construction experts and inspectors, attorneys, and other employees as may in its judgment be necessary, and fix their compensation.

(7) Provide grade separations, at its own expense, with respect to all public roads, State highways and interstate highways intersected by the turnpikes and to change and adjust the lines and grades thereof so as to accommodate the same to the design for such grade separation. The damages incurred in changing and adjusting the lines and grades of public roads, State highways and interstate highways shall be ascertained and paid by the commission in accordance with the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code. If the commission shall find it necessary to provide a grade separation or change the site of any portion of any interstate highway, State highway or public road, or vacate the same, it shall cause it to be reconstructed and restored forthwith, at the commission's own proper expense, on the most favorable location and in as satisfactory a manner as the original road, or vacate it, as the case may be. The method of acquiring the right-of-way and determining damages incurred in changing the location of or vacating such road, State highway or interstate highway shall be ascertained and paid for in accordance with the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(8) Petition the court of common pleas of the county wherein is situate any public road or part thereof affected by the location therein of the turnpikes, for the vacation, relocation or supply of the same, or any part thereof, with the same force and effect as is now given by existing laws to the inhabitants of any township or such county, and the proceedings upon such petition, whether it be for the appointment of viewers or otherwise, shall be the same as provided by existing law for similar proceedings upon the petitions.

(9) Have all of the powers and perform all the duties prescribed by the act of May 21, 1937 (P.L.774, No.211), referred to as the Pennsylvania Turnpike Commission Act.

(b) Maintenance to be paid out of tolls.—The turnpike extensions and improvements and the conversion of toll-free roads to toll roads when completed and open to traffic shall be maintained and repaired by and under the control of the commission. All charges and costs for the maintenance and repairs actually expended by the commission shall be paid out of tolls. The turnpike, the turnpike extensions and improvements and the toll-free roads converted to toll roads shall also be policed and operated by a force of police, toll takers and other operating employees as the commission may, in its discretion, employ.

Section 3. The act is amended by adding a section to read:

Section 16.1. Electronic toll collection.

(a) Liability of owner.—

(1) *Notwithstanding any other provision of law, if an operator of a vehicle fails to pay the prescribed toll at any location where tolls are collected by means of electronic toll collection, the owner of the vehicle shall be liable to the commission for failure of the operator of the vehicle to comply with this section where the violation is evidenced by information obtained from a violation enforcement system.*

(2) *If a violation of this section is committed, the registration plate number of the vehicle as recorded by a violation enforcement system shall establish an inference that the owner of the vehicle was then operating the vehicle. The inference shall be overcome if the owner does all of the following:*

(i) *Testifies that the owner was not operating the vehicle at the time of the violation.*

(ii) *Submits to an examination as to who at the time was operating the vehicle.*

(iii) *Reveals the name and residence address, if known, of the operator of the vehicle.*

(3) *If an action or proceeding is commenced in a county other than that of the residence of the owner, a verified written statement setting forth the facts prescribed in paragraph (2)(i) through (iii) shall suffice to overcome the inference.*

(4) *If the inference is overcome, the operator of the vehicle may be held liable under this section for failure to pay the prescribed toll in the same manner as if the operator were the owner of the vehicle.*

(b) Imposition of liability.—*The liability set forth in subsection (a) shall be imposed upon an owner for a violation of this section or the regulations of the commission occurring within the territorial limits of this Commonwealth. If a violation is committed as evidenced by a violation enforcement system, the following shall apply:*

(1) *The commission or an authorized agent or employee must prepare and mail a notice of violation:*

(i) *The notice of violation must be sent by first class mail to each person alleged to be liable as an owner for a violation of this section. The notice must be mailed to the owner at the address shown on the vehicle registration no later than 60 days after the alleged conduct, except that if the inference of operation is overcome as prescribed in subsection (a), the notice must be mailed to the alleged operator of the vehicle no later than 60 days after the date the inference is overcome. Personal service shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the mailing of notice.*

(ii) The notice must contain information advising the person charged of the manner and time in which the liability alleged in the notice may be contested. The notice must also contain a warning advising the person charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered on the notice.

(2) If an owner of a vehicle or an owner who is a lessor of a vehicle receives a notice of violation under this section for any time period during which the vehicle was reported to a police department as having been stolen, it shall be a defense to the allegation of liability that the vehicle had been reported to the police as having been stolen prior to the time the violation occurred and that the vehicle had not been recovered by the time of the violation. For purposes of asserting the defense provided by this subsection, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the commission within 30 days after receiving the original notice of violation. Failure to send the information within the 30-day time limit shall render the owner or lessor liable for the penalty prescribed by this section.

(3) An owner who is a lessor of a vehicle as to which a notice of violation was issued under paragraph (1) shall not be liable for a violation if the owner sends to the commission a copy of the rental, lease or other such contract document covering the vehicle on the date of the violation, with the name and address of the lessee clearly legible to the commission, within 30 days after receiving the original notice of violation. Failure to send such information within the 30-day time limit shall render the lessor liable for the penalty prescribed by this section. If the lessor complies with the provisions of this section, the lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for purposes of this section and shall be subject to liability for the penalty prescribed by this subsection.

(4) A certified report or a facsimile report of an authorized agent or employee of the commission reporting a violation of this section or regulations of the commission based upon the recorded information obtained from a violation enforcement system shall be prima facie evidence of the facts contained in the report and shall be admissible as an official record kept in the ordinary course of business in any proceeding charging a violation of this section or the toll collection regulations of the commission.

(5) Notwithstanding any other provision of law, all videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this section shall be for the exclusive use of the commission, its authorized agents, its employees and law enforcement officials for the purpose of discharging duties pursuant to this section and the regulations of the

commission. The information shall not be deemed a public record under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. The information shall not be discoverable by court order or otherwise, nor shall it be offered in evidence in any action or proceeding which is not directly related to a violation of this section, the regulations of the commission or indemnification for liability imposed pursuant to this section. The restrictions set forth in this paragraph shall not be deemed to preclude a court of competent jurisdiction from issuing an order directing that the information be provided to law enforcement officials if the information is reasonably described and is requested solely in connection with a criminal law enforcement action. The restrictions set forth in this paragraph shall not be deemed to preclude the exchange of such information between any entities with jurisdiction over or which operate an electronic toll collection system in this Commonwealth or any other jurisdiction, nor shall it be deemed to prohibit the use of information exclusively for the purpose of billing electronic toll collection account holders, deducting toll charges from the account of an account holder, enforcing toll collection laws and related regulations or enforcing the provisions of an account holder agreement.

(6) An imposition of liability under this section must be based upon a preponderance of evidence. An imposition of liability pursuant to this section shall not be deemed a conviction of an owner and shall not be made part of the motor vehicle operating record of the person upon whom such liability is imposed, nor shall it be considered in the provision of motor vehicle insurance coverage.

(7) An owner who shall admit, be found liable or fail to respond to the notice of violation for a violation of this section shall be civilly liable to the commission for the amount of the toll evaded or attempted to be evaded, if such amount can be determined, and a reasonable administrative fee not to exceed \$35 per notification. If the amount of the toll evaded or attempted to be evaded cannot be determined, that amount shall be deemed to be equal to the maximum toll from the farthest point of entry on the Pennsylvania Turnpike to the actual point of exit.

(8) Nothing in this section shall be construed to limit the liability of the operator of a vehicle for any violation of this section or of the regulations of the commission.

(c) Placement of electronic toll collection device.—An electronic toll collection device which is affixed to the front windshield of a vehicle in accordance with the regulations of the commission shall not be deemed to constitute a violation of 75 Pa.C.S. § 4524 (relating to windshield obstructions and wipers).

(d) Privacy of electronic toll collection account holder information.—Notwithstanding any other provision of law, all

information kept by the commission, its authorized agents or its employees which is related to the account of an electronic toll collection system account holder shall be for the exclusive use of the commission, its authorized agents, its employees and law enforcement officials for the purpose of discharging their duties pursuant to this section and the regulations of the commission. This information includes names, addresses, account numbers, account balances, personal financial information, vehicle movement records or other information compiled from transactions with such account holders. The information shall not be deemed a public record under the Right-to-Know Law, nor shall it be discoverable by court order or otherwise or be offered in evidence in any action or proceeding which is not directly related to the discharge of duties under this section, the regulations of the commission or a violation of an account holder agreement. The restrictions set forth in this subsection shall not be deemed to preclude a court of competent jurisdiction from issuing an order directing that the information be provided to law enforcement officials if the information is reasonably described and is requested solely in connection with a criminal law enforcement action. The restriction set forth in this subsection shall not be deemed to preclude the exchange of such information between any entities with jurisdiction over or which operate an electronic toll collection system in this Commonwealth or any other jurisdiction, nor shall it be deemed to prohibit the use of the information exclusively for the purpose of billing electronic toll collection account holders, deducting toll charges from the account of an account holder, enforcing toll collection laws and related regulations or enforcing the provisions of an account holder agreement.

(e) Definition.—As used in this section, the term “owner” means any person, corporation, firm, partnership, agency, association, organization or lessor that, at the time a vehicle is operated in violation of this section or regulations of the commission, is the beneficial or equitable owner of the vehicle, has title to the vehicle, is the registrant or co-registrant of the vehicle registered with the Department of Transportation or a comparable agency of another jurisdiction or uses the vehicle in its vehicle renting or leasing business. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person.

Section 4. This act shall take effect immediately.

APPROVED—The 13th day of December, A.D. 2000.

THOMAS J. RIDGE